

1 **BEFORE THE ARIZONA BOARD OF OSTEOPATHIC EXAMINERS**  
2 **IN MEDICINE AND SURGERY**

3 In the Matter of:

No. 07A-3888-OST

4 **S. FOSTER EASLEY, III, D.O.**  
5 Holder of License No. 3212

**CONSENT AGREEMENT TO FINDINGS  
OF FACT, CONCLUSIONS OF LAW AND  
MODIFIED ORDER**

6 For the Practice of Osteopathic Medicine  
7 In the State of Arizona

8 **CONSENT AGREEMENT**

9 By mutual agreement and understanding, between the Arizona Board of Medical Examiners in  
10 Medicine and Surgery ("Board") and S. Foster Easley III, D.O. ("Respondent"), the parties agreed  
11 to the following disposition of this matter.

12 1. Respondent has read and understands this Consent Agreement and the stipulated  
13 Findings of Fact, Conclusions of Law and Amended Order ("Consent Agreement"). Respondent  
14 acknowledges that he has the right to consult with legal counsel regarding this matter and has  
15 done so or chooses not to do so.

16 2. By entering into this Consent Agreement, Respondent voluntarily relinquishes  
17 any rights to a hearing or judicial review in state or federal court on the matters alleged in *Easley*  
18 *v. Arizona Board of Osteopathic Examiners* (Superior Court of Arizona, Maricopa County Case  
19 No. LC2008-000170), or to challenge this Consent Agreement in its entirety as issued by the  
20 Board, and waives any other cause of action related thereto or arising from said Consent  
21 Agreement.

22 3. This Consent Agreement is not effective until approved by the Board and signed  
23 by its Executive Director.

24 4. Respondent acknowledges and accepts the imposition of the statement of facts  
25 and conclusions of law contained in the Consent Agreement and Order.

26 5. This Consent Agreement, or any part thereof, may be considered in any future  
27 disciplinary action against Respondent.

28 6. This Consent Agreement does not constitute a dismissal or resolution of other  
29 matters currently pending before the Board, if any, and does not constitute any waiver, express or  
30 implied, of the Board's statutory authority or jurisdiction. The acceptance of this Consent

1 Agreement does not preclude any other agency, subdivision or officer of this State from  
2 instituting other civil or criminal proceedings with respect to the conduct that is the subject of  
3 this Consent Agreement.

4 7. All admissions made by Respondent are solely for final disposition of this matter  
5 and any subsequent administrative proceedings or litigation involving the Board, Respondent and  
6 the State of Arizona; and, therefore, said admissions by Respondent are not intended for any  
7 other purpose or administrative regulatory proceeding or litigation in another state or federal  
8 court.

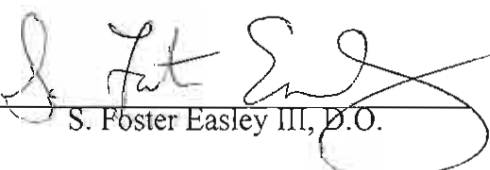
9 8. Upon signing this agreement, and returning this document (or a copy thereof) to  
10 the Board's Executive Director, Respondent may not revoke the acceptance of the Consent  
11 Agreement. Respondent may not make any modifications to the document. Any modifications to  
12 this original document are ineffective and void unless mutually approved by the parties.

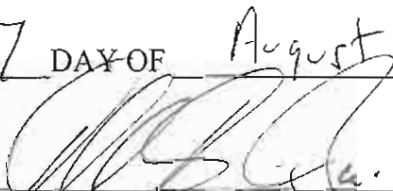
13 9. If the Board does not adopt this Consent Agreement, Respondent will not assert as  
14 a defense that the Board's consideration of this Consent Agreement constitutes bias, prejudice,  
15 prejudgment or other similar defense.

16 10. This Consent Agreement, once approved and signed, is a public record that will  
17 be publicly disseminated as a formal action of the Board and will be reported to the National  
18 Practitioner Data Bank and to the Board's website.

19 11. If any part of the Consent Agreement is later declared void or otherwise  
20 unenforceable, the remainder of the Consent Agreement in its entirety shall remain in force and  
21 effect.

22 REVIEWED AND ACCEPTED THIS 7 DAY OF August, 2008.

23   
24 S. Foster Easley III, D.O.

25   
26 Charles E. Buri, Esq., Respondent's Counsel  
27 Approved as to Form Only

### 28 JURISDICTIONAL STATEMENTS

29 1. The Board is empowered, pursuant to A.R.S. § 32-1800 *et seq.*, to regulate the  
30 practice of osteopathic medicine in the State of Arizona, and the conduct of the persons licensed,  
registered, or permitted to practice osteopathic medicine in the State of Arizona.

1           2.     The Board has the authority to informally dispose by stipulation, agreed  
2 settlement, consent order or default pursuant to A.R.S. § 41-1092.05 (F)(5).

3           3.     Respondent holds license No. 3212 to practice osteopathic medicine in Arizona.

### 4                           **FINDINGS OF FACT**

#### 5                           **BACKGROUND**

6           1.     Dr. Easley testified that he was first licensed by the Board in 1997.

#### 7                           **The 1999 Probation**

8           2.     On the Biennial Renewal Application form that Dr. Easley submitted to the Board for  
9 1999, he disclosed that he had entered a drug diversion program as a result of having been  
10 arrested for possession of marijuana.

11          3.     In fact, Dr. Easley had been arrested for possession of narcotics in September 1997  
12 and had been charged in April 1998 with knowingly possessing or using cocaine, a narcotic drug,  
13 and knowingly possessing or using marijuana having a weight of less than two pounds. In  
14 September 1998, he had been ordered to enter a drug diversion program and had his two-year  
15 sentence suspended, pending the outcome of the diversion program.

16          4.     As a result of Dr. Easley's disclosure, the Board opened an investigation, which was  
17 designated Case No. 2656. On August 7, 1999, the Board voted to place Dr. Easley's license on  
18 probation for monitoring and restriction and authorized its executive director to issue and to sign  
19 a Stipulated Consent Order.

20          5.     On October 18, 1999, the Board issued Findings of Fact, Conclusions of Law and  
21 Board Order for Probation, which concluded that Dr. Easley's arrest for possession of cocaine  
22 and marijuana constituted unprofessional conduct as defined in A.R.S. § 32-1854(19), (22), and  
23 (41). Dr. Easley was placed on probation for a term of five years and ordered to comply with the  
24 standard terms of disciplinary probation for substance abuse, in relevant part as follows:

25           5.1    To undergo treatment by a Board-approved psychologist or psychiatrist, the  
26 frequency of treatment sessions to be determined by the practitioner, at Dr. Easley's expense.

27           5.2    To provide a copy of the order of probation to any facility that employed him.

28           5.3    To abstain completely from the consumption of alcohol or illicit drugs and to not  
29 take any prescription medication except as prescribed by his treating physician. Dr. Easley was  
30

1 required to maintain a log containing the name of each prescribed medication, the prescribing  
2 physician, and the reason for the medication.

3 5.4 To submit to random biological fluid testing and to promptly provide, within 60  
4 minutes of notification, required biological fluids for testing, at his expense.

5 5.5 To undergo a psychological evaluation, at the Board's request, by a Board-approved  
6 psychologist or psychiatrist, at his own expense.

7 5.6 To participate at a minimum in two self-help meetings per week.

8 5.7 To reimburse the Board for all expenses associated with its investigation and  
9 continued monitoring of the matter.<sup>1</sup>

10 6. Dr. Easley acknowledged that, if he failed to comply with any of the terms of  
11 probation, his failure would constitute unprofessional conduct under A.R.S. § 32-1854(26) and  
12 could be considered as grounds for further disciplinary action against his license, including  
13 suspension or revocation.

#### 14 **The 2001 Probation**

15 7. On or about July 1, 2000, Dr. Easley tested positive for alcohol on his urine drug  
16 screen. He had provided the sample five hours after the required time.

17 8. The Board opened a new investigation, which was designated Case No. 2656.

18 9. On July 10, 2000 the Board determined that Dr. Easley was medically and/or  
19 psychologically unable to engage in the practice of medicine and was an immediate threat to the  
20 health and welfare of the public and suspended his license summarily.

21 10. Dr. Easley requested that he be allowed to enter into a Stipulated Consent Order for  
22 assessment and inpatient treatment and that, upon completion of such treatment, he be placed on  
23 probation for another five-year period.

24 11. On August 19, 2000, the Board authorized its executive director to issue and to sign  
25 a Stipulated Consent Order regarding Dr. Easley's suspended license while he completed  
26 treatment.

27 12. On December 13, 2000, Dr. Easley successfully completed a three-month inpatient  
28 treatment program at Springbrook Northwest, which is located in Oregon. He subsequently  
29 requested that his license be reactivated under a probationary consent order.

30 <sup>1</sup> See the Board's Ex. 1.

1           13. On March 31, 2001, Dr. Easley and the Board's executive director executed  
2 Findings of Facts, Conclusions of Law, and Consent Order for Terms and Conditions of  
3 Probation of License. Dr. Easley admitted that his positive test result constituted a violation of  
4 A.R.S. § 32-1854(26), (40), and (41). The Board ordered that Dr. Easley be placed on probation  
5 for another five-year period and to observe the same terms and conditions set forth at Finding of  
6 Fact No. 5, *supra*, except that he was required to attend a minimum of three self-help meetings  
7 per week and to "abstain completely from the consumption of alcoholic beverages or any  
8 substance with alcohol (i.e., cough syrups)."<sup>2</sup>

9                                   **The January 26, 2006 Probation**

10           14. On October 19, 2005 as part of random testing, Dr. Easley tested positive for  
11 alcohol. A subsequent ETC test confirmed the presence of alcohol in the random sample.

12           15. A second test performed of a biological fluid that Dr. Easley provided on October  
13 20, 2005 was negative for alcohol.

14           16. The Board opened an investigation, which was designated Case No. 3624.

15           17. On November 9, 2005, the Board's executive director ordered Dr. Easley to obtain  
16 an assessment and evaluation for possible alcohol dependency from Michael A. Sucher, MD, an  
17 allopathic physician who specialized in addiction medicine.

18           18. On November 15, 2005, Dr. Sucher evaluated Dr. Easley for a possible chemical  
19 dependency relapse. Dr. Sucher's diagnostic impression and recommendations were made  
20 available to the Board.

21           19. On November 22, 2005, the Board voted to seek an inpatient evaluation of Dr.  
22 Easley at the Betty Ford Center Professional Evaluation Program ("the Betty Ford Center") to  
23 determine Dr. Easley's current status. In addition, the Board requested and Dr. Easley agreed to  
24 discontinue his practice until the matter was resolved.

25           20. On December 10, 2005, the Board reviewed the Preliminary Clinical Diagnostic  
26 Evaluation Discharge Summary for Dr. Easley from the Betty Ford Center. In the course of  
27 reviewing the matter, the Board determined that Dr. Easley had violated the provisions of his  
28 probation by consuming alcohol. The Board voted to offer Dr. Easley a consent agreement.

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<sup>2</sup> See the Board's Ex. 2.

1           21. On January 26, 2006, Dr. Easley and the Board's executive director executed a  
2 Consent Agreement to Findings of Facts, Conclusions of Law, and Probationary Order. Dr.  
3 Easley admitted that his second positive test result constituted a violation of A.R.S. § 32-  
4 1854(25). The Board ordered that Dr. Easley be placed on probation for another five-year period  
5 (in addition to the probationary period already in effect in Case No. 2812) and required to  
6 observe the same terms set forth at Findings of Fact No. 5 and 12, *supra*, except that he was  
7 required to enter and to successfully complete an intensive-outpatient psychiatric rehabilitation  
8 program for alcohol dependency for a minimum of six months and to develop a plan for aftercare  
9 treatment and monitoring, including but not limited to individual and/or group counseling  
10 sessions, random bodily fluid testing.<sup>3</sup>

11                                   **The Statutory Violation at Issue**

12           22. On February 3, 2007 and February 20, 2007, Dr. Easley's random bodily fluid  
13 samples tested positive for the controlled substance Modafinil.

14           23. The Board opened a new investigation, which was designated Case No. 3667.

15           24. At the Board's April 28, 2007 meeting, Dr. Easley admitted that he had violated the  
16 Board's January 26, 2006 order by self-prescribing the medication Provigil, which contains  
17 Modafinil. He admitted that he used samples of the medication for "the last several months."

18           25. After Dr. Easley's admission, the Board voted to forward the matter for  
19 administrative hearing.<sup>4</sup>

20           26. The matter was referred to the Office of Administrative Hearings and, on May 23,  
21 2007, the Board issued a Complaint and Notice of Hearing, which charged Dr. Easley with  
22 commission of acts of unprofessional conduct as defined in A.R.S. § 32-1854(25), (22), and (45)  
23 and informed Dr. Easley that, in light of his disciplinary history, it would be seeking suspension  
24 for more than twelve months or revocation of his license under A.R.S. § 32-1855(F).

25           27. After one continuance, a hearing was held on August 22, 2007 and September 6,  
26 2007.

27           28. The Board had admitted into evidence four exhibits establishing the disciplinary  
28 history set forth above.

29  
30 <sup>3</sup> See the Board's Ex. 3.

<sup>4</sup> See the Board's Ex. 4.

29. Dr. Easley admitted that cause existed to penalize his medical license under A.R.S. § 32-1854(22) and (25),<sup>5</sup> but denied that the evidence showed that he was morally unfit to practice medicine to establish cause to penalize his license under A.R.S. § 32-1854(45).<sup>6</sup> Dr. Easley also offered evidence in mitigation of any penalty to be imposed as a result of his admitted statutory violations.

30. Dr. Easley testified on his own behalf and presented the testimony of Dr. Sucher, psychologist Phillip Lett, Ph.D., chemical dependency counselor Melanie Wall, his treating physician Lauro Amezcua-Patino, MD, and character witnesses Louie Tapia and Arnaldo Maldonado, and had admitted into evidence seven exhibits, which are described below.

## HEARING EVIDENCE

**Dr. Easley**

31. Dr. Easley grew up in California. In 1984, he graduated from the University of California at Irvine with a Bachelor of Science degree in Biology (Pre-Med) and a Bachelor of Arts Degree in Psychology. He also had a minor in dance.

32. For the next five years, or until 1989, Dr. Easley worked as a pharmaceutical salesman. During that time, the physicians he met through his work encouraged him to go back to school to become a physician.

33. Although Dr. Easley found it hard to give up the good income he earned as a pharmaceutical salesman, he returned to school and graduated from osteopathic medical school, he testified in 1998. After a one-year residency at the University of Kansas, he completed his residency in Arizona.

34. Dr. Easley began moonlighting as a physician at a facility in Sun City West, doing treadmill testing and providing prescriptions for senior citizens to engage in exercise programs. Because the facility “emptied out” in the summer, the owners brought Dr. Easley into the facility on a part-time basis and, eventually, laid him off.

<sup>5</sup> These statutory subsections include among the definitions of “unprofessional conduct” that provides cause to penalize a license to practice osteopathic medicine “[u]sing controlled substances or prescription-only drugs unless they are provided by a medical practitioner . . . as part of a lawful course of treatment” and “[v]iolating a formal order, probation or a stipulation issued by the board under this chapter.

<sup>6</sup> This statutory subsection includes among the definitions of "unprofessional conduct" "[c]onduct in the practice of medicine that evidences moral unfitness to practice medicine."

1           35. Dr. Easley testified that, about this time, he began having problems with the Board.  
2 He was a "brand-new physician with a blemish on his record." After his discharge from the 120-  
3 day inpatient program for alcohol abuse in Oregon, he began performing part-time locum tenens  
4 work to get by, including at a clinic that included a family practice and HIV practice.

5           36. After the physician at the clinic where Dr. Easley had been performing locum  
6 tenens work died unexpectedly, he worked for the clinic as an independent contractor for three  
7 years.

8           37. In 2004, Dr. Easley opened his own practice. He is board-certified in family  
9 practice and also is certified by the American Academy of HIV Physicians, which requires him  
10 to pass an examination every 2 years and to complete 15 hours/year in continuing education,  
11 because the field changes so rapidly. Dr. Easley also has been trained in treatment of diabetes  
12 and hepatitis.

13           38. Dr. Easley is also a national speaker on behalf of a pharmaceutical manufacturer,  
14 based on his public speaking skills and credentials as a doctor and former salesperson. He has  
15 been trained to speak on behalf of a product, not as a commercial but based on the observed  
16 disease state. Among the products he has spoken publicly about is Provigil.

17           39. Dr. Easley's mother is from Costa Rica, he was raised in a bilingual home, and he  
18 speaks fluent Spanish. Dr. Easley has performed community work for Chicanos por la Causa  
19 and in the Spanish-speaking community. He has learned medical terminology in Spanish. Dr.  
20 Easley testified that, many times, Spanish-speaking patients cannot get answers from their  
21 physicians in Spanish. Dr. Easley testified that he does not criticize other doctors' care, but  
22 explains such care so that Spanish-speaking patients can understand.

23           40. Dr. Easley also does community work for Body Positive, which involves persons  
24 who are HIV positive. Part of his program as a recovering alcoholic is to give back to the  
25 community.

26           41. Dr. Easley testified that, when he first disclosed to the Board that he had been  
27 charged with felony drug possession, he was "naïve." He did not believe that he was an  
28 alcoholic. After he went to a party and drank alcohol in 2000, a random urinalysis was positive.  
29 The Board suspended his license and, after he completed the three-month inpatient treatment  
30 program, placed him on probation again.



1           42. Dr. Easley testified that the positive test for alcohol in 2005 was triggered because  
2 he felt "tired, lonely, and hungry." He was moving his office and experiencing grief for the first  
3 time after his best friend died. He was called to be tested the next day after he had taken a drink.

4           43. Dr. Easley testified that he was not allowed to continue practicing after the second  
5 test that was positive for alcohol, but instead was sent to the Betty Ford Center. The Board then  
6 required him to participate in intensive outpatient therapy, where he met Melanie Wall, who  
7 provided treatment through her company ADAPT ("Alcohol Drug Abuse Prevention &  
8 Treatment").

9           44. Dr. Easley testified that he is only allowed to speak on-label for pharmaceutical  
10 products. But he is given a big notebook on each product, which includes off-label uses and  
11 every study ever done. He was familiar with the off-label use of Provigil to treat Attention  
12 Deficit Disorder ("ADD") or Attention Deficit Hyperactivity Disorder ("ADHD").

13           45. Dr. Easley testified that he was finding it difficult to focus after he completed the  
14 ADAPT program. This difficulty had been a recurrent problem. He just decided to use samples  
15 of Provigil that he had obtained as a pharmaceutical salesperson. He did not discuss the matter  
16 with his Alcoholic Anonymous ("AA") sponsor. He knew that the terms of his probation  
17 required him not to take any prescription drugs, except as prescribed by another physician. He  
18 nonetheless took the Provigil "impulsively to see if it would work" because he did not have  
19 health insurance and was not seeing any regular physician.

20           46. Dr. Easley testified that it is clear to him now that his use of the Provigil, in  
21 violation of the terms of his probation, is a manifestation of the disease of alcoholism or  
22 chemical dependency. He does not know why it was not clear to him when he first took the  
23 drug. Dr. Easley testified that he has a new AA sponsor with whom he is working closely,  
24 repeating from the first the twelve steps, to identify and learn more about the "character defects"  
25 that led him to take the Provigil.

26           47. Dr. Easley testified that he has been evaluated by a psychiatrist, diagnosed with  
27 ADD or ADHD, and prescribed Provigil. He must see the psychiatrist at least once a month  
28 because there are no refills on the Provigil prescription.

29           48. Dr. Easley testified that he has never used prescription drugs that had not been  
30 prescribed to him, except for the Provigil. He has significant pain issues as a result of sciatica,

1 degenerative disk disease, a torn ACL medial meniscus in his knee, and a torn ligament in his  
2 ankle. He has never taken narcotics to treat this pain.

3 49. Dr. Easley testified that he believes the use of Provigil under his psychiatrist's care  
4 will help prevent any further relapse into alcoholism. He is now so much more focused and  
5 believes that he has derived a significant benefit from the proper use of the drug.

6 50. Dr. Easley testified that he believes that he would also benefit from participating in  
7 Dr. Sucher's group therapy for professionals. He has not begun this treatment because Dr.  
8 Sucher requires a referral from the Board.

9 51. Dr. Easley testified that, as a result of his unauthorized use of Provigil, he has  
10 learned a "hard lesson." The time since the positive test result has been very difficult and  
11 tumultuous for him and his family. The test has had a tremendous financial impact. But he  
12 believes he has benefited from what he has learned and has been going through a "growing  
13 process." The worst negative impact is the possibility that he will lose his license and practice,  
14 which would kill him.

15 52. Dr. Easley admitted on cross-examination that none of the insurers with whom he  
16 has contracts have terminated their relationship as a result of this matter, although Healthnet has  
17 contacted him. As a result of the probation he has been on since 1999, he cannot obtain  
18 malpractice insurance through the state MICA plan and had to obtain insurance from other  
19 markets, which is "exorbitant." He lost a couple of insurers when he first went on probation.  
20 But he only wants to "keep what I have."

21 53. Dr. Easley testified that he believes that he is safe to practice. He does not believe  
22 that his use of Provigil renders him morally unfit to practice osteopathic medicine.

23 **Dr. Lett**

24 54. Dr. Lett is a licensed psychologist who specializes in psychological and  
25 neuropsychological assessment. He has a M.S. and Ph.D. in rehabilitation. Since 1989, he has  
26 been in private practice, specializing in early intervention and treatment of people who abuse  
27 substances and ensuring their safe functioning in the workplace. He receives referrals from  
28 many professional licensing organizations, including those for dentists, allopathic and  
29 osteopathic physicians, nurses, pharmacists, and attorneys. His practice focuses on addiction.  
30

1 55. Dr. Easley had admitted into evidence Dr. Lett's July 31, 2007 summary of his  
2 treatment and current status, in relevant part as follows:

3  
4 [Dr.] Easley began receiving psychotherapy with me in 2001. I  
5 saw him shortly after he completed a 120 day residential treatment  
6 program for alcohol dependency. He was active in the  
7 recommended treatment from the initial treatment plan thru  
8 October 2005. He acknowledged at this time that he lapsed to  
9 alcohol use over a weekend and consequently tested positive for  
10 alcohol on a random drug screen. My reassessment of Dr. Easley  
11 suggested that he experienced a lapse and not a full blown relapse  
12 to alcohol use. I recommended intensive outpatient chemical  
13 dependency (IOPCD) treatment and he began a program right  
14 away. In my opinion, this lapse was a positive therapeutic event in  
15 his recovery process from alcohol dependency.

16 Since this lapse, he completed the IOPCD and continues in  
17 aftercare with the IOPCD provider [Ms. Wall]. Additionally, he  
18 continues in psychotherapy with me and actively participates in  
19 [AA] with his sponsor. On 3-12-07, [Dr.] Easley shared with this  
20 writer that he tested positive for Provigil on a Board drug screen.  
21 He explained that he obtained the Provigil as a sample and was  
22 attempting to manage self-reported symptoms of [ADHD]. On 3-  
23 26-07, he shared that he received a psychiatric consultation with  
24 Dr. Sisley, psychiatrist and a prescription to continue the Provigil  
25 to manage ADHD. Dr. Easley acknowledges that he made a bad  
26 choice by taking the Provigil without an authorized prescription.  
27 In my professional opinion this behavior indicates a lapse in his  
28 chemical dependency recovery process. I recommended to [Dr.]  
29 Easley that he engage in a structured aftercare program that  
30 includes individual psychotherapy, weekly group counseling,  
random drug screening and continued participation in his 12 step  
program of AA.

It is important to note that [Dr.] Easley has lapsed twice since his  
residential treatment episode for alcohol dependency in December  
2000. Chemical dependency is a disease that can remit and re-  
emerge in lapse or relapse. In my professional opinion, [Dr.]  
Easley has not experienced a "full-blown" relapse and his lapses  
have resulted in therapeutic gain.

[Dr.] Easley shares that there has been no practice complaints  
against his license. Clinical observation indicates that he exhibits  
high motivation to continue working a strong rehabilitation  
program for recovery from substance dependency. He has made  
measurable gains in several life areas since his treatment with  
started in 2001. Based on my clinical experience with [Dr.] Easley  
and his willingness to adhere to treatment recommendations as  
outlined above, I believe that he is very capable of functioning  
safely as a physician.

<sup>7</sup> Dr. Easley's Ex. A.

1           56. Dr. Lett testified that addiction is a brain disease that, in many cases, is  
2 characterized by chronic relapses. Although we have come a long way since the early 1930s,  
3 when AA was founded, many people still see addiction as a moral defect. But it is recognized as  
4 a disease, like high blood pressure or diabetes, which can be managed but possibly never cured.

5           57. Dr. Lett testified that it is important to note the difference between a lapse, which is  
6 a misstep, and a relapse, which is a return to a pre-cessation level of use or pattern of behavior.  
7 A person who smokes a single cigarette two years after ending a three-pack/day habit has  
8 suffered a lapse, not a relapse.

9           58. Dr. Lett testified that, after Dr. Easley was discharged from the 120-day inpatient  
10 program in 2001, he initially met with Dr. Lett weekly. After a while, they met bi-weekly, then  
11 quarterly. After the lapse in 2005, the duration and frequency of their meetings increased.

12           59. Dr. Lett testified that Dr. Easley had shared his suspicion that he suffered from  
13 ADHD before he testified positive for Provigil, but that he had not pursued the matter. His self-  
14 diagnosis and self-treatment of the ADHD is part of his disease of alcoholism or chemical  
15 dependency, which can manifest in secrecy, impulsiveness, and self-destructiveness. An  
16 alcoholic may act without getting confirmation or clarification from a partner, sponsor, or  
17 therapist because he cannot be honest with himself or another person. That kind of thinking  
18 precipitated Dr. Easley's use of Provigil.

19           60. Dr. Lett characterized Dr. Easley's unauthorized use of Provigil as a lapse. It is not  
20 an issue of whether Provigil is necessary to treat his ADHD. But Dr. Easley was "living in his  
21 own world"; he did not seek proper diagnosis and treatment of his ADHD. The therapeutic gain  
22 that has resulted from Dr. Easley's lapse is his self-examination of how he set himself up to  
23 make errors in judgment, so that cognitive strategies can be formulated to prevent the same or  
24 similar behavior in the future. Addiction is not only a person's biological relationship with a  
25 substance, but conditioned ways of thinking.

26           61. Dr. Lett testified that Dr. Easley performs better with more structure, including  
27 aftercare, AA, meeting with his sponsor, and meeting with Dr. Lett. He needs treatment over a  
28 longer period of time. Dr. Lett recommended that, in addition to the terms of the 2006 probation,  
29 Dr. Easley be required to participate in Dr. Sucher's program for professionals, which is  
30 structured and well-run.

62. Dr. Lett testified that, from a clinical perspective, he did not believe that Dr. Easley is a threat to patients. Dr. Easley understands the seriousness of his situation and is highly motivated to abide by the terms of his probation. Dr. Lett did not believe that Dr. Easley's license should be suspended or revoked.

63. Dr. Lett testified that he believes that, if Dr. Easley is allowed to remain on probation, there is a high probability that Dr. Easley can successfully complete probation and practice without the necessity of a more structured program monitored by the Board. An addict never gets to the point where he does not have to manage his disease. Dr. Lett testified that it is interesting that Dr. Easley chose to drink in 2005 just before he was scheduled to go before the Board and request an early termination of his probation.

64. Dr. Lett testified that he does not believe that Dr. Easley is morally unfit to practice osteopathic medicine. He does not believe that Dr. Easley ever made a conscious decision to violate the terms of his probation by taking Provigil.

**Ms. Wall**

65. Ms. Wall is a licensed chemical dependency counselor who owns ADAPT. She has worked in the industry for 15 years.

66. Dr. Easley has been Ms. Wall's patient since January 2006, when she started counseling him in ADAPT's intensive outpatient program as a result of the 2006 consent agreement. On April 26, 2006, Dr. Easley transitioned to aftercare and graduated from the program in February 2007. She continues to counsel him one-on-one on an individual basis.

67. Ms. Wall wrote a letter in support of Dr. Easley to the Board, which was admitted into evidence, in relevant part as follows:

In March 2007, Dr. Easley reported he had tested positive for Provigil, a medication used to treat ADHD. He admitted that he did not have a prescription, but did have samples, and use[d] the medication post a conversation with a Psychiatrist who agreed, Provigil would be appropriate based on his symptoms. However, rather than making an appointment with a doctor to obtain a prescription, he chose to use samples of the medication and ultimately tested positive in a random UDS for an unauthorized medication.

Dr. Easley readily reported he had been impulsive and in "self-will" and had made a huge error in judgment. I do not classify this to be a relapse as the medication is not habit forming and is not considered to be 'mind/mood altering'. I do however, consider it to be lapse, specifically a lapse in judgment.

1 Dr. Easley has verbalized the realization that he needs to work a  
2 more vigilant program, especially in regards to communication  
3 with his sponsor. That he impulsively used the medication, rather  
4 than running his decision past his sponsor. He has taken steps to  
5 engage in a more open relationship with his sponsor, who has  
6 reported to me that Dr. Easley has increased his contact and  
7 appears motivated to work a stronger program. They meet weekly  
8 and talk at least every other day.

9 While Dr. Easley was in treatment with me, it was apparent that his  
10 peers were resistant to give him the feedback he needed as he was  
11 a "doctor" and therefore perceived to be above the other members  
12 of the group. Though I attempted to remove that stigma, it  
13 remained none the less. I believe Dr. Easley needs to be [in] an  
14 ongoing support/therapy group that would be made up of his peers  
15 (physicians) who would be able to confront his addictive traits, i.e.  
16 self-will, false pride, self deception. It is not unusual for the traits  
17 of the disease to arise, it is my hope that this therapy group would  
18 help Dr. Easley to recognize his defects of character and gain  
19 support in overcoming them. My recommendation that Dr. Easley  
20 get involved in an ongoing physicians group to insure he remains  
21 vigilant in his recovery and to prevent such an error in judgment  
22 occurring in the future, has been endorsed by both Dr. Sucher and  
23 Dr. Lett.

24 Dr. Easley is a wonderful physician and works with patients most  
25 physicians shy away from. He is a certified HIV specialist and has  
26 used his own experience and recovery to treat the Chemically  
27 Dependent patient in his practice.

28 68. Ms. Wall testified that the many of the members of the group that she referred to in  
29 her letter were much younger than Dr. Easley and "fresh out of jail," except for an attorney. The  
30 other members of the group did not confront Dr. Easley when he exhibited addictive behaviors  
and thought patterns. She believes that Dr. Easley would benefit from aftercare that involved  
other physicians and professionals who would not hesitate to confront him, such as Dr. Sucher's  
program.

69. Ms. Wall testified that being a physician and an alcoholic was hard and  
characterized Dr. Easley's predicament as "self-will run riot." It is more difficult to break the  
habit of self-will than it would have been for someone not in his professional position.  
Physicians are known for their "God complex."

70. Ms. Wall pointed out that, at about the same time that Dr. Easley completed the  
aftercare program, February 2007, he started self-prescribing and using the Provigil. Alcoholics

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<sup>8</sup> Dr. Easley's Ex. D.

1 are known for self-sabotage. They must learn to be humble about their successes, and attribute  
2 success to their recovery, not their innate abilities.

3 71. Ms. Wall testified that the majority of alcoholics in recovery do not fight the desire  
4 to drink. Rather, they are "ego maniacs with inferiority complexes." The battles over the  
5 character traits and thought processes lessen with vigilance.

6 72. Ms. Wall characterized Dr. Easley's use of Provigil as a lapse rather than a relapse,  
7 which she characterized as the use of drugs to escape from reality. However, the relapse process  
8 starts long before the alcoholic starts using drugs and a lapse such as Dr. Easley committed is  
9 definitely part of the relapse process.

10 73. But Ms. Wall testified that Dr. Easley compromised his recovery but did not end it.  
11 He followed all of her recommendations. He went to psychiatrists to confirm his suspected  
12 ADHD and talks to his sponsor every other day. Because alcoholism is an insidious disease, she  
13 has never condemned anyone for coming out of remission. The Provigil incident humbled Dr.  
14 Easley and he understands the seriousness of the situation.

15 74. Ms. Wall testified that Dr. Easley is motivated to comply with the terms of  
16 probation. He has traveled a "longer road to sobriety than most people could endure." He has  
17 learned from his lapses and will be more vigilant in the future. But Ms. Wall testified that Dr.  
18 Easley is not in a "cycle of relapse." His use of Provigil may have been a "cry for help."

19 75. Ms. Wall testified that Dr. Easley treats patients that no one else wants to treat,  
20 including substance abusers and HIV positive patients. Nothing in Dr. Easley's behavior  
21 indicates that he is not safe to practice. Rather, he has demonstrated commitment to his practice,  
22 patients, and the ethics of his profession. Ms. Wall has treated many of Dr. Easley's patients  
23 who consider him to be one of the best. He is not morally unfit to practice osteopathic medicine.

#### 24 Dr. Sucher

25 76. Dr. Sucher is an allopathic physician who practices addiction medicine. The Board  
26 refers regulated physicians to Dr. Sucher and stipulated to his credentials at the hearing.

27 77. Dr. Sucher wrote a letter dated August 7, 2007 on Dr. Easley's behalf, which was  
28 admitted into evidence and provided in relevant part as follows:

29 I met with [Dr. Easley] yesterday to discuss his recovery program,  
30 the incident of self prescribing and some recommendations for  
ongoing treatment and monitoring. He asked if I would consider

1 allowing him to participate in our Post Treatment Supervision  
2 monitoring program to provide additional support to his recovery  
3 program.

4 We reviewed the incident where Dr. Easley self prescribed  
5 modafinil. He accepts responsibility for inappropriate action and  
6 feels very remorseful about it. He is now receiving this medication  
7 appropriately through his psychiatrist, Dr. Sisely. Otherwise his  
8 recovery program seems very stable. I do not believe his non  
9 compliance represents relapse but rather poor judgment on his part.

10 I would be more than willing to augment his recovery through  
11 participation in Post Treatment Supervision with the board's  
12 approval. This would include his maintaining full compliance with  
13 his probationary order with the board. We would add a relapse  
14 prevention group therapy component to his monitoring and  
15 coordinate drug testing with the board.

16 78. Dr. Sucher also provided his post-treatment supervision brochure with the letter.<sup>10</sup>  
17 He testified that treatment of addiction includes evaluation, diagnosis, treatment, and monitoring.  
18 His firm also performs testing.

19 79. Dr. Sucher testified that addiction is a brain disease characterized by a disease  
20 process. Addiction is in essence the compulsive continued use of a substance despite negative  
21 consequences. The disease is also manifested by denial, minimization, and continued use.

22 80. Dr. Sucher testified that professionals are especially motivated to remain in  
23 recovery due to the negative consequence of the inability to practice their profession. He has  
24 evaluated and treated more than 2,000 professionals in 15 years. Based on good data, his five-  
25 year success rate for health professionals is 80% to 90%. The 90% success rate is seen in  
26 professionals who have undergone inpatient programs plus rigorous aftercare and monitoring. A  
27 10-year study of dental professionals had a 79% success rate.

28 81. Dr. Sucher testified that a lapse is a brief period of return to substance use, which  
29 results in no major consequences to the recovery process. The individual is brought back into  
30 the program and continues his recovery. But professional licensing boards consider lapses to be  
serious and lapses may result in suspension until the professional completes a more intensive  
program.

82. Dr. Sucher testified that he met Dr. Easley in November 2005. He evaluated and  
advised Dr. Easley, but did not provide a formal monitoring contract because Dr. Easley already

<sup>9</sup> Dr. Easley's Ex. B.

<sup>10</sup> See Dr. Easley's Ex. C.



1 had a consent agreement with the Board. Dr. Sucher was provided a copy of Dr. Easley's  
2 evaluation from the Betty Ford Center.

3 83. Dr. Sucher testified that he again saw Dr. Easley in the spring of 2007, after he had  
4 self-prescribed and taken Provigil. By the time Dr. Sucher saw Dr. Easley; he had been  
5 diagnosed as ADHD and had obtained a prescription for Provigil from Dr. Sisely.

6 84. Dr. Sucher described Dr. Easley's self-prescription as a "very serious lapse in  
7 judgment," which Dr. Easley recognized. Dr. Sucher testified it was not a relapse.

8 85. Dr. Sucher has not been asked for a treatment recommendation. But he testified  
9 that Dr. Easley should "absolutely maintain compliance" and should continue to work at an  
10 active recovery program. All of the terms of the Board's 2006 order remain appropriate. In  
11 addition, Dr. Lett had recommended a more structured aftercare program. Dr. Sucher agreed that  
12 more treatment would benefit Dr. Easley.

13 86. Dr. Sucher testified that Dr. Easley would be welcome to participate in his relapse  
14 prevention group, which is led by a psychiatrist or psychologist and meets weekly or biweekly.  
15 The group is comprised of professionals, who readily identify relapse behavior in other  
16 professionals. Dr. Sucher believes that Dr. Easley would benefit from participation in the group.

17 87. Dr. Sucher testified that lapse and relapse are very common among recovering  
18 addicts. But lapses and relapses can be very positive and can break through denial and  
19 minimization.

20 88. Dr. Sucher testified that there is no reason to think that Dr. Easley is not safe to  
21 practice. He did not see any therapeutic benefit to Dr. Easley or his patients if his license to  
22 practice medicine is revoked or suspended.

23 89. Dr. Sucher also recommended that Dr. Easley continue treatment by a psychiatrist  
24 and increased frequency of bodily fluid testing.

25 90. Dr. Sucher explained that Provigil (modafinil) is a mild stimulant, not an  
26 amphetamine that is prescribed to treat daytime sleep disorder, which is characterized by daytime  
27 drowsiness. He is not aware of any real potential for abuse.

28 91. Dr. Sucher testified that Provigil commonly is used off-label to treat ADHD.  
29 Provigil is a much safer alternative to Ritalin. Off-label means the use has not been approved by  
30

1 the FDA. Off-label uses of drugs are common in psychiatry. Off-label use does not mean the  
2 use falls outside the standard of care.

3 92. Dr. Sucher testified that the FDA approved Provigil for use in the United States five  
4 years ago. After its approval, it almost immediately was used to treat ADHD or ADD.

5 93. Dr. Sucher was asked if lapses in judgment were generally just personal or whether  
6 lapses could involve professional judgment. Dr. Sucher testified that, usually, a professional will  
7 do everything he can to maintain his practice to the end. The Council on Alcoholism has done  
8 studies and found that an alcoholic will give up his family five years before he gives up his  
9 career.

10 94. Dr. Sucher believes that Dr. Easley's long-term probability of success in his  
11 recovery is high.

12 **Dr. Sisely**

13 95. Psychiatrist Suzanne A. Sisely, MD evaluated Dr. Easley on March 16, 2007. She  
14 diagnosed him with ADD and noted a history of polysubstance abuse, in long-term remission.

15 96. Dr. Sisely prescribed Provigil to Dr. Easley and made a plan of treatment, in  
16 relevant part as follows:

17 Since pt already taking Provigil intermittently via his private office  
18 samples, and reports feeling he needs this medication to  
19 function/focus on daily tasks of medical practice, I have advised pt  
20 to continue using this medicine SPARINGLY to avoid  
21 tolerance/addiction potential (in light of past hx of substance  
22 abuse). But I feel the benefits of using this medicine (improved  
23 performance at work which benefits patient safety) may outweigh  
24 the risks of addiction (addiction potential with this medication is  
25 VERY LOW, and can be detected immediately if pt starts  
26 ramping-up dose and needing early RF's). Pt given rx for Provigil  
27 200mg qam today (#30 which should ideally last pt 3 months), but  
28 urged to dose not more than 3-4 times per week to avoid tolerance,  
29 and not more than 1/2-1 per AM. Pt now agrees to use this  
30 medicine on days when he knows he has a lot to do and focus is  
imperative. But pt reluctant to continue this med due to UDS  
detection, and fearful of raising a "red flag" with Medical Board  
again. However, pt advised to consider continuing intermittent use  
in order to preserve daily functioning and ensure continued  
clean/sober. I am concerned that if pt halts this medicine  
completely, he may be at HIGH risk for relapse on previous street  
drugs (cocaine, etc.) to keep up an appropriate level of functioning.  
Pt advised to continue NA/AA at least 3 meetings per week and  
adherence to other mandated CD rehab guidelines prescribed by  
AZ Medical Board. RTC 1 month.

[4/20/2007 addenda:] Pt saw Dr. Lett who supports pt pursuing an  
Adult ADD evaluation and treatment plan. Pt admits that he

1 “screwed-up” by not notifying the Board that he tried a few  
2 Provigil samples prior to getting the rx for Provigil from me.  
3 However, I do NOT believe this episode represents a relapse—  
4 Provigil does not upregulate the Nucleus Accumbens, and thus  
5 does not promote addiction nor tolerance (except in rare cases of  
6 pts with extensive polysubstance abuse). Pt admits he is having  
7 worsening trouble focusing on medical tasks, esp at the end of the  
8 day trying to review charts and deal with numerous details of his  
9 private practice. Pt reports he feels very unproductive. Pt  
10 encouraged to try to restart Provigil—even low-dose of 100mg  
11 gam intermittently may help him improve his work performance.  
12 Pt is extremely financially limited, and has significant debt to  
13 lawyers, etc assoc with his Board monitoring. Pt advised to cont  
14 Provigil pm and RTC 1 month for reevaluation of ADD sx’s.<sup>11</sup>

### 9 Dr. Patino

10 97. Dr. Patino has been a psychiatrist since 1989. He evaluated Dr. Easley on August  
11 16, 2007. Dr. Patino gave Dr. Easley the Axis I diagnoses of ADHD, predominantly inattentive,  
12 alcohol dependence in remission, cocaine dependence in remission, and adjustment disorder with  
13 mixed emotional features.

14 98. Dr. Patino testified that ADHD has two sets of symptoms: inattentive, which means  
15 difficulty paying attention, and hyper focusing, which means a person is able to focus on one  
16 thing, but neglects everything else. ADHD children also are hyperactive, which means  
17 purposeless behaviors. ADHD adults are less hyperactive but may become more impulsive.  
18 Stress may increase ADHD symptoms. Dr. Easley manifests a consistent pattern of inattention  
19 plus hyper or impulsive behaviors, which he reported has occurred since he was a child. Dr.  
20 Easley is very likely to benefit from treatment of his ADHD with Provigil at a dose of 200 to 400  
21 mg per day.

22 99. Dr. Patino testified that the FDA is somewhat concerned about the side effects of  
23 Provigil in treating ADHD, but not its efficacy.

24 100. Dr. Patino testified that treatment of Dr. Easley’s ADHD should decrease his  
25 impulsive behavior and help him maintain sobriety. Substantial research and anecdotal evidence  
26 supports that treatment of ADHD enhances the success of treatment of substance abuse.<sup>12</sup>

27 101. Dr. Patino testified that comprehensive treatment of Dr. Easley’s disorders should  
28 include pharmacological intervention, cognitive behavioral therapy to facilitate the development  
29 of more positive adaptive coping skills, and continued substance abuse treatment.

30 <sup>11</sup> Dr. Easley’s Ex. G.

<sup>12</sup> Dr. Patino’s report of these studies was admitted into evidence as Dr. Easley’s Ex. E.

102. Dr. Patino testified that Dr. Lett is providing appropriate cognitive therapy. Dr. Patino also recommended that Dr. Easley continue his substance abuse program.

103. Dr. Patino testified that Dr. Easley's intensity is quite severe. The strong effort that he has made to maintain his sobriety and his success for more than five years demonstrate his high degree of motivation. But because Dr. Easley lacked the necessary cognitive skills, he experienced a lapse, evidenced by the self-prescription of Provigil. Dr. Patino testified that Dr. Easley would benefit from the aftercare program provided by Dr. Sucher.

104. Dr. Patino testified that he believes that Dr. Easley can safely engage in the practice of medicine. His violation of his probation absolutely does not render him morally unfit to practice medicine.

**Mr. Sapia**

105. Mr. Sapia is the clinical supervisor for the program for HIV positive individuals and their families through Chicanos por la Causa. Mr. Sapia has also worked in substance abuse treatment and in general mental health.

106. Mr. Sapia met Dr. Easley in 2001, when he indicated an interest in providing medical services for Spanish-speaking clients. Whenever Mr. Sapia called Dr. Easley, he always came for Latino Health Awareness Days and to the HIV Latino support group. Dr. Easley talks about medications and side effects and performs simple diagnostics, such as taking blood pressure. Mr. Sapia's clients are pleased with Dr. Easley's services.

107. Mr. Sapia testified that Dr. Easley has treated three of his clients who are HIV positive. They are pleased with his services.

108. Mr. Sapia testified that few other doctors speak fluent Spanish. Ninety percent of his clients are Spanish speakers. Only one other doctor volunteers to help him, but that doctor does not speak Spanish. Because most doctors do not speak Spanish, his clients do not share some things. Dr. Easley is a valuable asset to his program and to the Hispanic community.

**Mr. Maldonado**

109. Mr. Maldonado works for the State of Arizona in the Department of Health Services Division of Behavioral Health in the Office of Human Rights. He is an advocate for the rights of mentally ill persons.

110. Mr. Maldonado did not meet Dr. Easley through his work. Instead, he met Dr. Easley in a recovery group. He also knows some people that Dr. Easley serves.

111. Mr. Maldonado testified that he is familiar with Dr. Easley's work in the HIV community, to whom he provides medical care and counseling for substance abuse and mental health issues. Many people who are HIV positive also have substance abuse and mental health issues, which need to be addressed. Unfortunately, many practitioners see the three issues separately. Dr. Easley provides holistic care.

112. Mr. Maldonado testified that, if Dr. Easley can no longer provide this service, the HIV community would suffer.

### **CONCLUSIONS OF LAW**

1. The Board is empowered to regulate the licensing and practice of osteopathic medicine in the State of Arizona and this matter lies within its jurisdiction.<sup>13</sup>

2. The Board bears the burden of proof and must establish cause to sanction Dr. Easley's license by a preponderance of the evidence.<sup>14</sup> Mr. Easley bears the burden to establish factors in mitigation of any penalty by the same evidentiary standard.<sup>15</sup> "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."<sup>16</sup> A preponderance of the evidence is "[t]he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other."<sup>17</sup>

3. Dr. Easley admitted that he committed unprofessional conduct as defined by A.R.S. § 32-1854(22) and (25) by self-prescribing Provigil, in violation of his probation. Therefore, cause exists for the Board to impose the penalties set forth in A.R.S. § 32-1855(I).<sup>18</sup>

<sup>13</sup> See A.R.S. § 32-1800 *et seq.*

<sup>14</sup> See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119; see also *Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

<sup>15</sup> See A.A.C. R2-19-119.

<sup>16</sup> Morris K. Udall, ARIZONA LAW OF EVIDENCE § 5 (1960).

<sup>17</sup> BLACK'S LAW DICTIONARY at page 1220 (8<sup>th</sup> ed. 1999).

<sup>18</sup> These penalties include "censure, probation, suspension of license, revocation of license, an order to return patient fees, imposition of hearing costs, imposition of a civil penalty not to exceed five hundred dollars for each violation for such period of time, or permanently, and under conditions the board deems appropriate for the protection of the public health and safety and just in the circumstances." In addition,

4. With respect to the appropriate penalty, the Board's primary responsibility is to protect the public. In the decade since Dr. Easley has been licensed, he has committed four serious incidents of unprofessional conduct as a result of his addictions. His disease has persistently actively manifested in repeated overt acts of unprofessional conduct.

5. Yet Dr. Easley has maintained his recovery, with only one incident involving alcohol in the past seven years. If he had obtained a diagnosis of ADHD or ADD and a prescription for Provigil from a properly licensed practitioner before taking it, no additional incident of unprofessional conduct would have occurred and the Board would not have opened its investigation into this matter. Drs. Patino and Sisely agreed that appropriate treatment of Dr. Easley's ADHD will support his continued recovery from and the sustained remission of his substance dependence.

## ORDER

**IT IS HEREBY ORDERED** that License No. 3212 shall be **REVOKED**. It is further ordered **STAYING** the revocation and placing Respondent on **PROBATION** for a period **FIVE YEARS** commencing March 31, 2008, with terms and conditions detailed in the following paragraphs. If, after providing Respondent with notice and a hearing, the Board determines that Respondent violated Paragraph No. Nine (9) of this Order, the Board shall lift the stay of Revocation. It is further ordered **SUSPENDING** Respondent from March 31, 2008 through August 8, 2008 for a total of four (4) months and eight (8) days.

1. Respondent shall enter into a structured aftercare program that is specifically designed to meet the needs of professionals, such as that offered by Dr. Sucher, and that is approved by the Board. Respondent shall follow the recommendations for treatment and shall notify the Board of such recommendations.

a. Respondent will develop a plan for aftercare treatment and monitoring which shall include, but may not be limited to, individual and/or group counseling sessions, random body fluid testing, agreement for release of treatment records and reports to the Board, prohibition of the use of alcohol and controlled substances unless the latter is prescribed or coordinated by his

"[t]he board may charge the costs of an investigative or administrative hearing to the licensee if pursuant to that hearing the board determines that the licensee violated this chapter or board rules."

1 treatment physician, and regular meeting with the Board, and submit this plan to the Board for its  
2 approval.

3 b. The program in 1a shall be pre-approved by the Board's executive director and shall  
4 be submitted for approval within twenty days of the effective date of the Board's order.

5 2. Respondent will continue his treatment for his diagnosed ADHD through Dr. Patino  
6 or another Board-approved psychiatrist.

7 3. Respondent will continue counseling and treatment by Dr. Lett and Ms. Wall, as  
8 previously required by the Board's orders in Case Nos. 2812 and 3624.

9 4. Respondent will sign a release authorizing personnel at any facility from which he  
10 receives treatment or counseling to inform the Board of his progress as to his in-patient or out-  
11 patient evaluation(s) and any in-patient or out-patient treatment program(s) and will provide the  
12 Board with a copy of any and all records pertinent to his diagnosis and treatment during his  
13 probationary period.

14 5. Respondent shall comply with the recommendations of Drs. Sucher, Lett, and Patino  
15 and Ms. Wall, or any other Board-approved practitioners who are retained to treat his substance  
16 dependency or ADHD, for the frequency of therapy treatment sessions. Respondent shall inform  
17 the Board by letter (mailed within ten days of the date of the Board's Order) of the therapist or  
18 practitioner's name; and Respondent shall undertake and fully cooperate with a program of  
19 treatment established by the therapist or practitioner. In the event Respondent changes therapists  
20 or practitioners, he shall give the Board written notice within ten days of said action.  
21 Respondent shall not discontinue or reduce the frequency of therapy or monitoring until he has  
22 submitted a written request to the Board and obtained Board approval.

23 6. Respondent's therapists and treating practitioners shall receive a copy of this Order  
24 and Board staff shall cooperate with and disclose all relevant information in the Board's files  
25 concerning Respondent. The treating therapist or practitioner shall be directed by Respondent to  
26 send to the Board a detailed written progress report every month for the remainder of the  
27 probation; and Respondent shall waive any confidentiality concerning his therapy or treatment so  
28 that the Board may receive full disclosure of information. The expense of the aforementioned  
29 therapy and the reports to the Board by Respondent's therapists or treating practitioners shall be  
30 the sole responsibility of Respondent.

1           7. Respondent shall provide a copy of the Board's final order and any subsequent orders  
2 to all facilities where Respondent is currently (or subsequently) employed as a physician and/or  
3 has (or subsequently receives) privileges to engage in the practice of medicine. Respondent shall  
4 provide a copy of the Board's final order to all treating physicians, dentists and/or health care  
5 professionals. Respondent shall continue to make the aforementioned disclosure and to provide  
6 copies of the Board's final order until the expiration of the order.

7           8. Respondent may have his license to practice as an osteopathic physician restricted,  
8 suspended or revoked by the Board in the future if:

9           a. The Board finds that Respondent does not have the requisite mental, physical and  
10 emotional fitness to safely continue the practice of medicine, or

11           b. There are new ground for finding unprofessional conduct concerning Respondent; or

12           c. Respondent fails to comply fully with the terms and conditions of this Order.

13           9. Respondent shall abstain completely from the consumption of alcoholic beverages or  
14 any substance with alcohol (i.e., cough syrups); and Respondent shall not consume illicit drugs  
15 or take any controlled substances (i.e., prescription only drugs) unless his treating physician  
16 prescribes such medication for him with the awareness that Respondent has a substance abuse  
17 disorder. Respondent shall maintain a monthly log (for the duration of probation) of all  
18 prescription only drugs taken by him and such log shall include the following information:

19           a. The name of the medication;

20           b. The name of the prescribing physician; and

21           c. The reason for the medication.

22 At the first of each month, Respondent shall report by letter to the Board whether or not he is  
23 taking any prescription only medication and, if so, provide a copy of his log reflecting the above  
24 information.

25           10. Respondent shall also, as part of his probation:

26           a. Submit to and cooperate in any independent medical or psychological evaluation that  
27 is ordered by the Board for Respondent and conducted by the Board's designated physician  
28 and/or psychologist which shall be paid for by Respondent; and  
29  
30



1           b. Appear before the Board, upon receipt of a request by written or telephonic  
2 notification from the Board's executive director which shall be given at least five days prior to  
3 the Board meeting; and

4           c. Submit to random biological fluid testing and promptly provide (i.e., within sixty  
5 minutes of notification) required biological fluids for testing and said testing shall be done at the  
6 Respondent's expense.

7           11. Respondent shall participate in a minimum of three (3) self-help meetings per week  
8 through such organizations as AA, NA, CA, and doctors' Caduceus group. Respondent shall  
9 keep a log of all meetings attended and have the log signed by the chairperson of the meeting.  
10 Respondent will provide the Board with a copy of the signed log the first of every month.

11           12. In the event Respondent moves and ceases to practice medicine in Arizona, he shall  
12 give written notice to the Board of his new residence address within twenty days of moving and  
13 the terms and duration of his probation may be stayed by the Board until Respondent returns to  
14 practice medicine in Arizona.

15           13. Respondent shall reimburse the Board for all expenses associated with the  
16 continued monitoring of this matter.

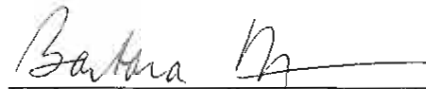
17           14. Respondent shall reimburse the Board for all expenses associated with its  
18 investigation and the hearing in this matter.

19           15. Respondent shall continue to meet all licensing requirements such as continuing  
20 medical education and renewal requirements including applicable fees pursuant to A.R.S. § 32-  
21 1825.

22           16. The Board's executive director shall send correspondence to the appropriate state  
23 and/or federal law enforcement agency disclosing information in the Board's possession which  
24 may establish criminal misconduct by Respondent, i.e., illicit use of controlled substances.

25           17. Respondent's failure to comply with the requirements of the Board's final order  
26 shall constitute unprofessional conduct as defined at A.R.S. § 32-1854(26) and may be  
27 considered as grounds for further disciplinary action (e.g., suspension or revocation of license) in  
28 the event that Respondent fails to comply with any of the requirements of the Board's final  
29 order.  
30

1 DATED THIS 7<sup>th</sup> DAY OF AUGUST, 2008

2  
3 

4 Barbara Meyers, Deputy Executive Director

5  
6  
7  
8 Consent Agreement to  
9 Findings of Fact, Conclusions  
of Law and Amended Order filed this 7<sup>th</sup> day of  
August, 2009 with the:

10 Arizona Board of Osteopathic Examiners  
11 In Medicine and Surgery  
9535 East Doubletree Ranch Road  
12 Scottsdale, AZ 85258-5539

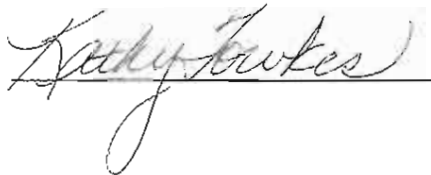
13 Copies of the foregoing sent be certified  
14 mail, return receipt requested, this 7<sup>th</sup>  
day of August, 2008 to the:

15 Charles E. Buri, Esquire  
16 Friedl, Richter & Buri, PA  
6909 East Greenway Parkway, Suite 200  
Scottsdale, AZ 85254-2149

17 S. Foster Easley, III  
18 5501 North 19th Avenue Ste. 218  
Phoenix, AZ 85015

19 Copy of the foregoing sent by regular  
20 mail the 7<sup>th</sup> day of August, 2008  
to the:

21 Blair Driggs, Assistant Attorney General  
22 Office of the Attorney General  
1275 West Washington  
23 Phoenix, AZ 85007

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25  
26  
27  
28  
29  
30